SOON KONG MENG & ANOR.

v.

LEE THYE @ LEE AH LAN (F) & 2 ORS.

FEDERAL COURT, KUALA LUMPUR
TAN SRI DATO' ANUAR BIN DATO' ZAINAL ABIDIN CJ (MALAYA)
DATO' PEH SWEE CHIN FCJ
DATO' WAN ADNAN BIN ISMAIL FCJ
[CIVIL APPEAL NO. 02-489-1990]
18 APRIL 1995

INTERPRETATION: *Words in statute - Interpretation - Whether could be extended or restricted - Whether to be construed in harmony with subject and object of statute.*

PRACTICE & PROCEDURE: *Specific performance - Affidavit in support - Requirement of O. 81 r. 2(1) - Deposition as to the belief that "there was no defence to the action" - Compliance - Different phrase used by plaintiffs - Whether fatal - Whether an illegality.*

The respondents, the plaintiffs in the Court below, had applied for an order of specific performance of a sale and purchase agreement under O. 81 r. 2(1) Rules of the High Court 1980. In their supporting affidavit the respondents did not depose, as required by r. 2(1), that it was their belief that *"there was no defence to the action"*. The affidavit instead deposed that *"I wish to state here that the 1st and 2nd defendants are making a deliberate attempt to deceive the plaintiffs and the Honourable Court by affirming a false affidavit"* (the quoted words). Before the Federal Court the sole issue that arose was whether these quoted words constituted sufficient compliance with the requirement of O. 81 r. 2(1).

Held:

Per Peh Swee Chin FCJ (delivering the judgment of the Court):

[1] The mere failure to employ the words of O. 81 r. 2(1) that it was the respondents' belief that "there is no defence to the action" was not fatal and nor was it an illegality. The quoted words, coupled with the denial of the allegations made by the defendants, were a sufficient compliance with the requirement of the rule.

[2] Words in a statute ought to be construed in a sense in which they best harmonize with the subject of the statute and in which also, the object of the statute is to be attained, even though sometimes the said sense is not strictly in accordance with the ordinary general meaning of the words used. The result from this is that any words in statute, in order for them to accord with the intention of the legislature, could be extended or restricted realistically as the case may be, on their interpretation.

[Appeal dismissed].

*[**Bahasa Malaysia** Translation of Headnotes]*

PENTAFSIRAN: *Perkataan-perkataan dalam statut - Pentafsiran - Samada boleh dilanjutkan atau terhad - Samada hendaklah ditafsirkan sesuai dengan hal-perkara dan objek statut.*

AMALAN & PROSEDUR: *Pelaksanaan spesifik - Afidavit sokongan - Kehendak-kehendak A. 81 k. 2(l) - Deposisi berhubung dengan kepercayaan bahawa "there was no defence to the action" (tidak terdapat pembelaan kepada tindakan tersebut) - Pematuhan - Ungkapan berlainan telah digunakan oleh plaintif - Samada memudaratkan - Samada suatu kepenyalahan undang-undang.*

Responden, iaitu plaintif dalam Mahkamah di bawah, telah memohon perintah pelaksanaan spesifik di bawah A. 81 k. 2(1) Kaedah-kaedah Mahkamah Tinggi 1980 bagi satu perjanjian jualbeli. Dalam afidavit sokongan mereka responden tidak mendeposkan, sepertimana yang dikehendaki oleh k. 2(l), bahawa ianya merupakan kepercayaan mereka bahawa "tidak terdapat pembelaan kepada tindakan tersebut". Afidavit tersebut sebaliknya mendeposkan "Saya ingin menyatakan di sini bahawa defendan pertama dan kedua sedang membuat satu percubaan untuk menipu plaintif dan Mahkamah yang mulia dengan mengikrarkan afidavit palsu" (perkataan yang dipetik). Di hadapan Mahkamah Persekutuan satu-satunya isu yang berbangkit adalah sama ada perkataan yang dipetik ini membentuk pematuhan yang memadai terhadap kehendak-kehendak A. 81 k. 2(1).

Diputuskan:

Oleh Peh Swee Chin HMP (menyampaikan penghakiman Mahkamah):

[1] Kegagalan semata-mata untuk menggunakan perkataan-perkataan A. 81 k. 2(l) bahawa ianya merupakan kepercayaan responden bahawa " tidak terdapatnya pembelaan kepada tindakan tersebut" tidak memudaratkan dan bukan juga suatu kepenyalahan undang-undang. Perkataan yang dipetik disini, bersama-sama dengan penafian terhadap pengataan-pengataan yang dibuat oleh defendan, adalah suatu pematuhan yang secukupnya terhadap kehendak-kehendak kaedah.

[2] Perkataan-perkataan dalam sesuatu statut seharusnya ditafsirkan menurut cara yang ianya paling bersesuaian dengan hal-perkara statut tersebut dan dalam mana juga, objek atau tujuan statut tersebut boleh dicapai, sungguhpun kadangkalanya maksud tersebut tidak secara tegasnya menuruti maksud am perkataan-perkataan yang digunakan. Hasil daripada ini adalah bahawa apa-apa perkataan dalam statut, agar ianya bersesuaian dengan niat perundangan yang berkenaan, berdasarkan kepada keadaan, boleh dilanjutkan atau dihadkan secara realitis berhubung dengan tafsirannya.

[Rayuan ditolak].

Cases referred to:
Tan Tik Seng v. Gomez Development Co. Sdn. Bhd. [1979] 2 MLJ 78 ***(refd)***
Sunkyong International v. Malaysia Rubber Development [1992] 2 MLJ 146 ***(refd)***
Esso Petroleum Malaysia Inc. v. Kago Petroleum Sdn. Bhd. [1995] 1 CLJ 283 ***(refd)***
IE Contractors Ltd. v. Lloyds Bank Plc [1990] 2 Lloyd's Rep. 496 ***(refd)***
RG (TJ) (an infant) [1963] 2 QB 73 ***(refd)***
Wiltshire v. Barrat [1966] 1 QB 312 ***(refd)***
re Hale [1915] IR 362 ***(refd)***

Legislation referred to:
Adoption Act, 1958 (U.K), s. 7(2)
Road Traffic Act, 1960 (U.K), s. 6(4)
Rules of the High Court 1980, O. 11 r. 4(1), O. 81 r. 2(1)
Rules of the Supreme Court, O. 14A
Wills Act, 1837 (U.K), s. 11

For the appellants - Manjit Singh; M/s. Sri Ram & Co.
For the respondents - Mura Raju (Zulkifli bin Othman with him); M/s. Zul & Co.

JUDGMENT

Peh Swee Chin FCJ:

We have earlier dismissed the appeal with costs here and below with an order for the deposit in question to be paid out to the respondents to account of taxed costs.

The order appealed from was made on an application for specific performance of a sale and purchase agreement of the land in question, the application having been filed apparently under O. 81 of the Rules of the High Court 1980. Several points were canvassed before us and we found no merits in them. We consequently declined to interfere with the order of the learned Judge below, and nothwithstanding this, we felt we should give our grounds for deciding on one of the points thus raised.

The point was that the plaintiffs in their supporting affidavit in respect of the said application under the said O. 81, had failed to depose, that in their belief there was no defence to the action (hereinafter called the said requirement), as stated in O. 81 r. 2 (1) which is set out below:

> 2(1) An application under r. 1 must be made by summons supported by an affidavit made by some person who can swear positively to the facts verifying the cause of action and stating that in his belief there is no defence to the action.

Reliance was placed on the case of *Tan Tik Seng v. Gomez Development Co. Sdn. Bhd.* [1979] 2 MLJ 78 in which it was held that in an application under O. 14A of the then Rules of Supreme Court, (since repealed), the plaintiff must state that in his belief there was no defence to the action, and the learned Judge held that the application for summary judgment under O. 14A must be dismissed *in limine.*

The old O. 14A referred to summary judgment for specific performance of sale or purchase of land etc. and stated the requirement, *inter alia*, that a deponent of a supporting affidavit should contain the deposition that, in his belief there was no defence, likewise in our present O. 81 r. 2(1) set out above.

It is true that there was not a sentence in any of the affidavits filed by the present plaintiffs in their application for specific performance, using the very words of the O. 81 r. 2(1) as set out above i.e., that in their belief, there was no defence to the action. But the affidavit by the person, who could swear positively to the facts verifying the cause of action, after dealing with the defendants' bare allegation that the sale and purchase agreement was a sham for an illegal money-lending transaction; stated by para 10 at page 57 of the appeal record: "I wish to state here that the 1st and 2nd defendants are making a deliberate attempt to deceive the plaintiffs and the Honourable Court affirming a false affidavit". (hereafter the quoted words).

The only important issue in the instant appeal was therefore whether or not the quoted words were a sufficient compliance with the said requirement. It goes without saying, it would have saved a great deal of time for everybody if the said words of the said requirements were just used, and they were not.

In an analogous case, O. 11 r. 4(1) of the Rules of the High Court, 1980 came up for consideration before the Supreme Court in *Sunkyong International v. Malaysia Rubber Development* [1992] 2 MLJ 146. Order 11 r. 4(1) provides, in connection with the service of a notice of a writ out of jurisdiction, that an application must be supported by an affidavit stating, *inter alia*, "that in the deponent's belief, the plaintiff has a good cause of action ... ". The Supreme Court held that this omission to mention a good cause of action could not amount to anything more than a mere failure to comply with a rule of the High Court. The inference is obvious, that the mere failure to state the words in the inverted commas was not fatal neither was it an illegality. The Supreme Court was dealing principally with some other point which was the main question in that appeal.

In *Esso Petroleum Malaysia Inc. v. Kago Petroleum Sdn. Bhd.* [1995] 1 CLJ 283 in connection with the wording of a demand or call on an on-demand unconditional performance bond or guarantee, this Court agreed with the decision of Britain's Court of Appeal in *IE Contractors Ltd. v. Lloyds Bank Plc* [1990] 2 Lloyd's Rep. 496 in declining to adopt the strict requirement of the words stated in the said performance bond. The Supreme Court stated, "If words are in apparent conformity with the wording ... they are sufficient".

In our view, words in a statute ought to be construed in a sense in which they best harmonize with the subject of the statute and in which also, the object of the statute is to be attained, even though sometimes the said sense is not strictly in accordance with the ordinary general meaning of the words used. The result from this is that any words in a statute, in order for them to accord with the intention of the legislature, could be extended or restricted realistically as the case may be, on their interpretation.

The two points raised respectively in the two Supreme Court cases cited above were decided not strictly in accordance with the general ordinary meaning of the words used in statute or documents, but construed with the attainment of their object in mind.

Thus words in a statute received an extended meaning for the same reason in *RG (TJ) (an infant)*, [1963] 2 QB 73, when the following words in s. 7(2) of Britain's "Adoption Act, 1958" came in question: "In determining whether an adoption order, if made, is for the welfare of the infant, the Court ... should give consideration to the wishes of the infant, having regard to his age and understanding". There, the Judge's consideration of the reports of an infant's guardian ad litem was held to be a sufficient compliance with this section and he need not actually see the infant.

Again, s. 6(4) of Britain's "Road Traffic Act 1960", requires a constable to arrest without warrant "a person committing" the offence of driving while unfit through drink. The Court of appeal, then presided over by Lord Denning in *Wiltshire v. Barrat* [1966] 1 QB 312 held that a constable was justified in arresting a man who was "apparently" committing the offence.

Again in *re Hale* [1915] IR 362 s. 11 of Britain's "Wills Act 1837" contained the words "mariner or seaman being at sea", it was held that a woman typist employed on an ocean-going liner came within the said words.

Having regard to what has been stated above, we were of the view that the quoted words above, coupled with the denial or demonstrable implausibility of the allegations of the defendants, were a sufficient compliance with the said requirement, i.e. the words being in apparent conformity with the words of the said requirement.

For the reasons stated, we dismissed the appeal.